

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL NICHOLAS,

Plaintiff,

v.

1:15-CV-0402
(GTS/CFH)

CITY OF SCHENECTADY; CITY OF
SCHENECTADY POLICE DEP'T; SGT. LUCIANO
SAVOIA; OFFICER MICHAEL HUDSON;
OFFICER CRAIG COMLEY; OFFICER MICHAEL
CROUNSE; OFFICE CHRIS SEMIONE; and U.S.
MARSHAL AL DWYER,

Defendants.

APPEARANCES:

OF COUNSEL:

MICHAEL NICHOLAS
Plaintiff, *Pro Se*
202 Winnikee Avenue
Poughkeepsie, New York 12601

CARTER, CONBOY, CASE, BLACKMORE,
MALONEY & LAIRD, P.C.
Counsel for Defendants
20 Corporate Woods Boulevard
Albany, New York 12211

MICHAEL J. MURPHY, ESQ.

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in the above-captioned civil rights action filed by Michael Nicholas (“Plaintiff”) against the above-captioned city, city department and six individuals (“Defendants”) arising from a stop, search and arrest in Schenectady, New York, on April 9, 2012, is United States Magistrate Christian F. Hummel’s Report-Recommendation recommending that certain claims asserted in Plaintiff’s Amended Complaint be dismissed.

(Dkt. No. 10.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline in which to do so has expired. (*See generally* Docket Sheet.)

When *no* objection is made to a report-recommendation, the Court subjects that report-recommendation to only a *clear error* review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*: *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1. (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks and citations omitted).

Here, based upon a review of this matter, the Court can find no clear error with regard to Magistrate Judge Hummel’s Report-Recommendation. (Dkt. No. 10.) Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (*Id.*) As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel’s Report-Recommendation (Dkt. No. 10) is **ACCEPTED** and **ADOPTED in its entirety**; and it is further

ORDERED that all claims against Defendant U.S. Marshal Al Dwyer, insofar as brought pursuant to 42 U.S.C. § 1983, shall be treated as if brought pursuant to *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 28 U.S.C. § 1331; and it is further

ORDERED that the following claims are **DISMISSED with prejudice**:

(1) Plaintiff’s claims against the individual Defendants in their official capacities;

- (2) Plaintiff's Eighth Amendment claims against all Defendants; and
- (3) Plaintiff's Ninth Amendment claims against all Defendants; and it is further

ORDERED that the following claims are **DISMISSED** without prejudice:

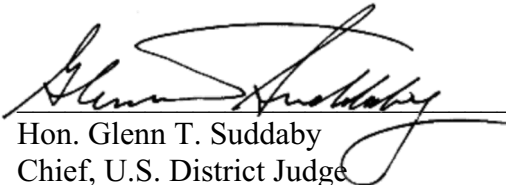
- (1) Plaintiff's First Amendment claims against all Defendants;
- (2) Plaintiff's Fourth Amendment malicious prosecution claims against all Defendants; and
- (3) Plaintiff's Fourteenth Amendment claims against all Defendants, including those claims made by Plaintiff as Fifth Amendment claims, but have been determined to be Fourteenth Amendment claims as set forth in the Report and Recommendation and by this Court.

The following claims **SURVIVE** Defendants' motion:

- (1) Plaintiff's Fourth Amendment claims for unlawful search and seizure, excessive force, and false arrest and imprisonment against Defendants Savoia, Hudson, Semione, Crounse and Comley in their individual capacities; and
- (2) All claims against Defendant Dwyer which claims shall be treated as if brought pursuant to *Bivens vs. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 28 U.S.C. §1331.

The Clerk of the Court is directed to terminate City of Schenectady and City of Schenectady Police Department.

Dated: October 8, 2015
Syracuse, New York


Hon. Glenn T. Suddaby
Chief, U.S. District Judge